

Bruce on Bikers' Rights

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WHEN IS IT RIGHT TO RIDE IN THE EMERGENCY LANE?

Or ... How I Ended Up Head Down on a Hood and Handcuffed

Story by Bruce Arnold with Legal Commentary by Matt Danielson



A FEW SATURDAYS AGO ... I was riding home to the flat sands of South Florida after a twisting tour through the steep mountain ridges and narrow winding valleys surrounding Charleston, West Virginia. The weather was comfortably cool heading south down the WV Turnpike and on through Virginia's Blue Ridge Highlands to Fancy Gap and North Carolina. But from Mayberry ("Mt. Airy") on, the temperature and humidity rose rapidly as the elevation descended. And by the time I stopped for gas just south of Charlotte in Rock Hill, South Carolina, my handlebar thermometer was registering over 100 degrees.

Continuing south on IH-77 through Columbia, I reached its terminus near Dixiana and turned east on IH-26. The oppressively sweltering heat was making me regret drinking Coke instead of water at my last stop a hundred miles back, and I was really looking forward to quenching my thirst at the next fill-up. Not long after that, though, I topped a rise and saw that my next stop would be delayed: There must have been a bad accident ahead, because before me was a sea of stationary taillights stretching in two lanes to the horizon. *Damn!* I stopped for a few moments like everyone else ... but only for a few. I recognized my dry mouth and draining strength as signs of dehydration. And yes, I admit I had neglected to pack any emergency water that morning, but I decided not to punish myself for that omission by sitting in the sun and baking on the hot pavement until I passed out.

The emergency/breakdown lane was open, so I weaved my way to it and slowly headed towards what I hoped would be a nearby exit. I didn't make it to the next rise, though, before I saw blue lights looming larger in my rearview mirror. Hoping the LEO would just want *by* and not want *me*, I pulled back into the sea of stalled cagers and weaved forward to the first open spot, which was in the left lane. By the time I got there, the South Carolina cruiser was parallel to me in the emergency lane, and the officer driving it was gesturing madly (*both meanings*) for me to come join him. I reluctantly but immediately obeyed, weaving over and putting my sidestand down just in front of his bumper. And I had barely come out of the saddle before an extremely irate young trooper was right in my face and pitching a first-class hissy fit. I had ear plugs in under my Fulmer Modus flip-top brain bucket, so I only caught about half of his tirade. It was clear, though, that he was taking serious exception to my use of the emergency lane.

I tried to explain to him that I was thirsty and needed to get to the next exit for some water, but he cut off every sentence I started. Each attempted explanation seemed to make him angrier, until finally he yelled something I caught word for word:

"You're going to JAIL!"

Stunned for a moment, I put up no resistance as he cuffed my hands behind my back, shoved me towards his cruiser, pushed me face-down over the hood, and ordered me not to move. He then got in the car and spoke to someone on his walkie-talkie, then someone else on his cell phone. I

couldn't read his lips or hear a word of what was said. But when he marched back around to where I was then standing, he was a changed man. His tone of voice was now softer, almost apologetic. And like night and day, his primary concern now seemed to be my well-being. He tried to remove the handcuffs, but inadvertently (*I think*) made them tighter and broke his key off in the lock. He then started frantically tearing through his front seat, glove box, side door panels, rear seat and trunk. I hoped he was looking for a spare key, and asked politely if he had any water as well. I also told him that my left hand was going numb. He came over and removed my lid for me, and then—believe it or not—took a towel and gently wiped the sweat from my face. He told me he had no water to give, but that he had sent for someone to bring a replacement key, and I should soon be on my way.

Sure enough, a few minutes later a deputy sheriff in a black SUV with lights flashing topped the rise behind us, rolled up and parked, and handed my new best friend a batch of keys. Seconds later the cuffs came off my wrists ... taking skin with them, and leaving marks behind. The trooper told me I was “good to go”, but first I begged a liter bottle of water off the deputy, and gulped it down in a matter of seconds. Then, as if I was waking from a bad dream, both LEOs disappeared and I was free to saddle up and ride the remaining 600 miles to Miami. *And curiously enough, without ever being charged with or ticketed for anything ... without ever showing any license or registration ... and without ever even being asked my name!*

Yes, mistakes were made here, and laws were broken. But perhaps not just by me, I speculated, but by the state trooper as well. In *my* opinion, using the emergency lane in this instance was justified. And in *my* opinion, being handcuffed for the traffic offense I may have committed was not. But knowing that sooner or later I would face a similar situation, I figured I'd better get a *legal* opinion on the matter. Attorney Matt Danielson of Tom McGrath's Motorcycle Law Group was kind enough to oblige with the following:

IN RESPONSE TO BRUCE'S ADVENTURE ... he asked me to look into the legality of riding in the emergency lane, and whether there are circumstances in which you would be allowed to. This has proven to be a quite a task given that we have 50 states, and each with their own set of laws. However, as far as I have been able to determine, no state (even California) allows you to use the shoulder or emergency lane for travel. OK, that is the easy part. However, what about a situation such as the one where Bruce found himself? He is stuck in traffic in 100 degree weather, with no water, and becoming light-headed with signs of heat exhaustion coming on. What is one to do in such a case?

Most every state recognizes the “**doctrine of necessity**”. It is a defense which allows a person to choose to break the law when doing so is better than the outcome which would occur if they did not. It is sometimes known as the “lesser of two evils” defense. However, the harm being avoided must be great. Commonly, the elements of necessity are as follows:

1. A reasonable belief that action is necessary to avoid imminent threatened harm;
2. A lack of other adequate means to avoid threatened harm, and;
3. A direct causal relationship that may be reasonably anticipated between action taken and avoidance of harm.

In other words, you must believe that you are in imminent danger (meaning that it is right upon you and about to happen). You must not have another way to avoid this harm other than breaking the law, such as by riding in the emergency lane. Finally, the action that you took has to be such that it will avoid the harm. This means that if a car in front of you catches on fire,

riding in the emergency lane to get away from the fire will reasonably avoid the harm of catching on fire yourself. Doing 90mph on one wheel through the middle of traffic, on the other hand, will not. There is no nexus between fleeing the fire and a prolonged high-speed wheelie.

But let's get back to Bruce's situation: This is trickier. If you are merely uncomfortable and thirsty, there is no real imminent harm to be avoided. No one likes to be hot and thirsty, but there is no real danger associated with that state of being. It merely sucks. However, when we add dizziness and symptoms associated with heat exhaustion, then the situation changes. I think one can make a reasonable argument that the imminent harm of passing out in the middle of the highway in 100 degree heat is an imminent danger. Without proper medical attention one could suffer serious injury or death. It would seem that riding at a moderate speed to the very next exit or facility would be a reasonable thing to do, and justified under the circumstances.

Now that we have discussed the legal side of things, or as I like to say—we have discussed the situation in theory—let's talk about the practical, real-world side. Even though you may be justified in your actions, if an officer decides to charge you, the judge is going to have to believe you in order to avoid conviction. Judges, as you know, sit every day listening to people give reasons why they should not be held accountable for their actions. They often listen to people being less than truthful, and therefore become a bit skeptical of excuses. Just because you had a legitimate reason to break the law does not mean the court has to believe you. The judge is the person who has the right to determine who is telling the truth and who is not. Therefore, if the judge does not believe you, it does not matter how just you were in your actions; *you are still going to be convicted*. That is why it is so important to take only the actions necessary. Do them in a safe and responsible manner. And if stopped, be very polite and make your reasons clear. The officer may not believe you, but your demeanor and actions will carry more weight with the court than merely being pissed off on the side of the road.

This brings us to a side issue: Even if you are polite, bad things sometimes happen. For instance, in Bruce's case he was placed in handcuffs for a prolonged period of time. In all actuality, the officer probably did not have the right to do that. However, since there is no real damage that occurred, that is probably a no harm no foul situation. That being said, had something bad occurred, we might be having a different conversation. For the most part, the police do not have the right to take you into custody for a traffic violation. Most states require that they release you on a summons, which is your charging document and your promise to appear in court. Check your own state laws, because there are exceptions. The exception for the police is that they may place you in investigative detention and cuff you when there are facts that would lead the officer to believe that it is necessary for his safety.

An example would be that the officer pulls over a car with five guys in it. He smells the distinct odor of marijuana. He would have the right to search the car. However, he is not going to turn his back on five guys to do it. He would call for assistance and place the suspects in temporary detention. However one-on-one on the side of the road, as in Bruce's situation, handcuffing is clearly uncalled for and in all honesty a violation of the law. Without an indication that the suspect is not going to appear in court, or that he is failing to discontinue the unlawful act, most states require the officer to release the suspect on a summons. If this is done to you and you are injured, make sure to get the officer's name and badge number. But be polite in doing so.

In closing, I caution everyone to be careful when you believe you have the right to break a law on the grounds of necessity. Your state legislature may have negated the defense for the particular law you are breaking. In Virginia, for example, the legislature has chosen to write the

habitual offender statute in a way that removes any justifications for driving after a court has declared you a habitual offender. They decided that the court could take that into consideration for sentencing, but not guilt. That in effect removed necessity as a defense for the crime of driving after having been declared a habitual offender. The moral here is to take a look at your own state's laws and be aware of what you can and cannot do. It is our responsibility as riders to know the laws of the jurisdictions in which we ride. It not only avoids being needlessly cited, but makes it harder for the unethical or uninformed LEO to trample our rights.

If anyone has any questions or comments concerning any of the above, please feel free to contact me at matt@motorcyclelawgroup.com or 1-800-321-8968.

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LEGAL DISCLAIMER: The preceding is for informational purposes only, and should not be considered legal advice. The laws governing the above may be different in your state.